

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

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JUL 29 P 4:08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Administration TITLE NUMBER: 148

CITE AUTHORITY: 5A-3-45

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 17

TITLE OF RULE BEING PROPOSED: Waste Disposal of State Property

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

#4.40

Agency: Department of Administration

Rule Type: Legislative

Title Number: 148

Cite Authority: 5A-3-45

STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY

The proposed rules are a result of the passage of SB 728 during the 2005 legislative session which made statute changes regarding the waste disposal of state property. The rules establish the procedures for disposing of waste property.

Agency: Department of Administration
Rule Type: Legislative

Title Number: 148
Cite Authority: 5A-3-45

BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS

The Department of Administration received only one comment regarding the rules. The comment was from Sandra Gillispie of the Department of Agriculture. The comments reflected their concerns that the impact of the rules would hinder their ability to operate as they felt that the costs would increase and the efficiency would suffer. Our response to their concerns are that the proposed rules do not establish any policy that would impact their concerns as the Statute already sets forth the law that impacts their agency. Therefore, no modifications were made as a result of their comments.

From: "Sandi Gillispie" <sgillispie@ag.state.wv.us>
To: <dlipscomb@wvadmin.gov>
Date: 7/28/2005 10:07:51 AM
Subject: Comment

See attached.

Sandra Gillispie

Director, Administrative Services

Department of Agriculture

July 28, 2005

Secretary of State's Office
State Capitol
Charleston, WV 25305

The Department of Agriculture submits the following comment regarding the Proposed Legislative Rules for Cannibalization of State Property and Waste Disposal of State Property:

We are concerned that the impact of these rules will further hinder our ability to operate. Operating costs will increase and efficiency will suffer. The time and expense required to generate the paperwork associated with the proposed changes will be detrimental as well as the delays caused by the time required to go through the approval process. In many instances, the Department of Agriculture must react quickly to resolve such an issue or else be faced with significant financial losses. For instance, if we have a forage harvester in operation and have 40 acres of hay down that must be processed in a 2 to 3 day time period and we followed the proposed process, we would lose the entire harvest. This is a small example of what we deal with. In other situations, we could lose livestock which would increase losses exponentially.

Although the above example addresses the need associated with farm equipment we have similar issues with our computer equipment. WVDA has absorbed budget cuts in recent years that have impacted our ability to replace equipment as quickly as it should be done. We are not alone in this dilemma. We must continue to operate and we must have functional equipment to do so. If we have two pieces of equipment that is not working and we can take the good parts of each to make one functional unit we should be able to do so. It is more cost effective for this department to be able to respond to our situation in a manner that is the wisest use of resources available to us. It is also the most responsible use of our limited resources and taxpayers' dollars.

TITLE 148
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION

SERIES 17
WASTE DISPOSAL OF STATE PROPERTY

FILED

JUL 29 P 4: 08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§148-17-1. General.

- 1.1. Scope. - This Legislative Rule is an explanation and clarification of operative procedures for the disposal of commodities as waste.
- 1.2. Authority. - W. Va. Code, §5A-3-45.
- 1.3. Filing Date. - May 15, 2005
- 1.4. Effective Date. -

§148-17-2. Definitions.

As used in this rule, all terms have the same meaning as provided in W. Va. Code §5A-1-1 and 5A-3-1 et seq., and as follows:

- (a) "Director" means the Director of the Purchasing Division of the Department of Administration.
- (b) "Waste" means a commodity with a value less than the benefit that can be realized through any authorized method of property disposal.
- (c) "Landfill" means a facility approved by the Department of Environmental Protection to accept waste for disposal.

§148-17-3. Applicability.

- 3.1 This legislative rule applies to all spending units of State government except those statutorily exempted. Exempted spending units may elect to follow this rule.
- 3.2 All requests for disposal of assets as waste under this rule must be approved by the Director of the Purchasing Division, or a designee.

§148-17-4. Authority.

The Director shall:

- (a) Ensure state assets are disposed of exclusively through the state agency for surplus property;
- (b) Provide for a means of disposal, which includes disposal of property in a landfill or by

other means of waste disposal;

- (c.) Require a written request to be submitted on a standardized form prescribed by the Purchasing Division;
- (d.) Evaluate requests for disposal of state property as waste and respond to agencies with documented decision;
- (e.) Provide recommendation to agencies if disposal as waste is not approved.

§148-17-5. Procedures.

- 5.1 The requesting agency submits a "Surplus Property Retirement Form" (WV-103) to the state agency for surplus property.
- 5.2 State agency for surplus property evaluates the recommendation of the requesting agency to determine if inspection of the property is necessary.
- 5.3 If the state agency for surplus property deems a physical inspection of the state property is warranted, an employee of the state agency for surplus property will visit the agency to gather information on the property condition.
- 5.4 After proper documentation has been completed and a physical inspection conducted (if necessary), a determination is made by the state agency for surplus property as to the approved disposal method of the commodity.
- 5.5 The state agency for surplus property has the right to take possession of any commodity retired as waste and provide disposal using any other approved method, in accordance with §5A-3-45 of the West Virginia Code.
- 5.6 If the state agency for surplus property determines within fifteen days of receiving a commodity that it must be disposed of as waste, any costs related to that disposal shall be the responsibility of the agency retiring the commodity.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 148, Series 17

Type of Rule: X Legislative Interpretive Procedural

Agency: Department of Administration, Purchasing Division

Address: 1900 Kanawha Boulevard, East

 Capitol Complex, Room E-119

 Charleston, WV 25305

Phone Number: 304- 558-3392 Email: dlipscomb@wvadmin.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed rules are a result of the passage of SB 728 during the 2005 legislative session. The rules outline the procedures for waste disposal of state property. There should be no additional fiscal impact as a result of the rules as the Statute now allows for waste disposal of property. These rules simply establish the procedures to be followed when an agency wants to dispose of property.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-0-	-0-	-0-
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: Title 148, Series 17

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

It would be hard to determine whether there will be any significant financial impact from the passage of SB 728. In the past when property has been disposed of the Surplus Property Unit has been required to bear the associated costs such as landfill fees, etc. The Statute change now requires the Agencies to bear the costs if the Surplus Property Unit determines within 15 days of receiving the property that it must be disposed of as waste. For the State of West Virginia as a whole there should be no significant fiscal impact from the adoption of the proposed legislative rules.

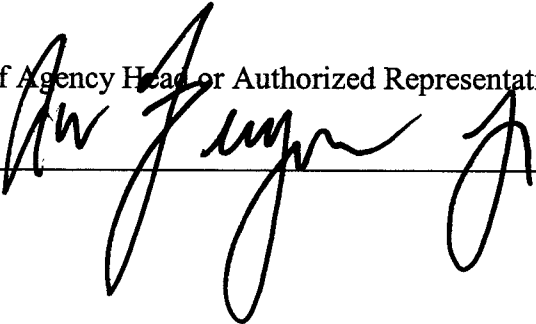
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

[Empty box for identifying areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.]

Date: _____

Signature of Agency Head or Authorized Representative



f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (please type)

Donna Lipscomb, Executive Coordinator

Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305

304-558-3392

g. IF DIFFERENT FROM ITEM "f", please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (please type)

Ken Frye, Manager of Surplus Property

2019 Washington Street, East

Charleston, WV 25301

304-558-4212

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

June 28, 2005 through July 28, 2005

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



JOE MANCHIN III
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

July 28, 2005

Via Hand-Delivery

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Ireland,

I am enclosing an original and fifteen copies of the documents listed below for filing. The proposed rules are in regard to Waste Disposal of State Property. I will provide the copies of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee,
2. Statement of Circumstance and Brief Summary of the rules,
3. Brief Summary of comments received, agency response, and amendments,
4. Proposed Rules,
5. Fiscal Note
6. Questionnaire,
7. Disc containing rules.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M. Lipscomb".

Donna M. Lipscomb
Executive Coordinator

Enclosures